

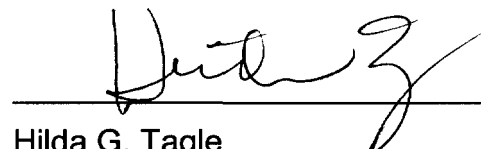
This is the second motion requesting leave to file a late response to Federal Defendants' pending motion to dismiss, Dkt. No. 22. Dkt. Nos. 25, 29. In Plaintiff's second response, she seemingly concedes every challenge the Federal Defendants the United States of America, DeLeon, Vidal and Hernandez raised to the second amended complaint. Dkt. No. 29, Ex. 1 at 2 ("Plaintiff agrees with Defendants['] assertions that Federal Defendants cannot be held liable for alleged deprivation of constitutional rights and Federal Defendants DeLeon, Vidal, and Hernandez cannot be held liable for any common law tort covered under Federal Tort Claims Act."). Because of these concessions, Plaintiff asserts that Federal Defendants' motion to dismiss, Dkt. No. 22, should be dismissed as moot. Dkt. No. 29, Ex. 1 at 2. However, while Plaintiff seems to concede Federal Defendants' challenges and attempts remedy the problems in the third amended

complaint, this Court identifies that the § 1983 claims against Defendants DeLeon, Vidal, and Hernandez remain.

Federal Defendants' motion challenged the § 1983 claims against Defendants DeLeon, Vidal, and Hernandez in their official capacities. Dkt. No. 22, at 1-2. Plaintiff's third amended complaint attempting to address that challenge nonetheless sues Defendants DeLeon, Vidal, and Hernandez for alleged § 1983 violations. Dkt. No. 24, Ex. 1 at 6-7. Thus, it seems that the § 1983 claims remain against Defendants DeLeon, Vidal, and Hernandez in their official capacities.

Accordingly, the Court **GRANTS** Plaintiff's Unopposed Motion for Leave to File Response to Federal Defendants' Partial Motion to Dismiss, Dkt. No. 29. To the extent Plaintiff intends to address the outstanding § 1983 claims, Plaintiff may file a response to Federal Defendant's motion to dismiss no later than December 18, 2007.

DONE at Brownsville, Texas, on December 13, 2007.


Hilda G. Tagle
United States District Judge